

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CAMPIDOGGIO LLC, et al.,

Plaintiffs,

v.

WELLS FARGO BANK, N.A., et al.,

Defendants.

C12-949 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) The deferred portion of plaintiffs' motion for Rule 37(b) relief, docket no. 129, is DENIED. The Court is satisfied that, contrary to plaintiffs' contention, defendant Wells Fargo Bank, N.A. ("Wells Fargo") has not invoked the attorney-client privilege too broadly.<sup>1</sup> The Court DECLINES to award attorney fees or costs to Wells Fargo.<sup>2</sup>

<sup>1</sup> With respect to the e-mail from attorney Shawn Sax (ADI000018346), as to which Wells Fargo has withdrawn its assertion of the bank examination privilege, see Minute Order at n.1 (docket no. 236 at 2), both sides have clarified that Wells Fargo continues to invoke the attorney-client privilege. Having reviewed the document again in camera, the Court is persuaded that it was properly withheld. With regard to the attachments to e-mails identified in the previous Minute Order (ADI000028439, 84166, 28988, 84505, 85341, and 84422), Wells Fargo has explained that some of these materials were produced and other documents were not disclosed as either not responsive to the discovery requests at issue or protected by attorney-client privilege, as reflected in a separate privilege log entry. The Court is satisfied that Wells Fargo has complied with its discovery obligations.

<sup>2</sup> Wells Fargo has acknowledged that, in response to plaintiffs' motion for Rule 37(b) relief, it undertook a review of its privilege assertions and, as a result, produced additional documents to plaintiffs. See Supp. Resp. at 2 (docket no. 247). Thus, although plaintiffs did not prevail on the motion, see Minute Orders (docket nos. 185 & 236), the Court is of the opinion that an award of expenses in opposing the motion would be "unjust." See Fed. R. Civ. P. 37(a)(5)(B)&(b)(2)(C).

1 (2) Plaintiffs' unopposed motion for extension, docket no. 239, is GRANTED  
as follows. The deadline set forth in the Minute Order entered March 11, 2014, docket  
2 no. 236, for plaintiffs to file a supplemental response to defendants' motion for summary  
judgment is extended to July 11, 2014. Defendants' supplemental reply is due on July  
3 18, 2014.

4 (3) Defendants' motion for summary judgment, docket no. 72, is RENOTED to  
July 18, 2014. Plaintiffs' motion to certify class, docket no. 37, and defendants'  
5 alternative motion to dismiss, docket no. 220, are also RENOTED to July 18, 2014. Both  
of these motions, however, will be decided after the Court rules on defendants' motion  
6 for summary judgment.

7 (4) Plaintiffs' motion for summary judgment, docket no. 210, is STRICKEN  
without prejudice as prematurely filed. See Hartley v. Suburban Radiologic Consultants,  
8 Ltd., 295 F.R.D. 357, 367-69 (D. Minn. 2013); see also Weir v. Joly, 2011 WL 6043024  
(D. Ore. Dec. 2, 2011); Gomez v. Rossi Concrete Inc., 2011 WL 666888 (S.D. Cal. Feb.  
9 17, 2011). If the Court grants the pending motion to certify class, plaintiffs may refile  
their motion for summary judgment after notice has been given and the period for class  
10 members to exclude themselves has expired.

11 (5) The Clerk is directed to send a copy of this Minute Order to all counsel of  
record.

12 Dated this 11th day of June, 2014.

13 William M. McCool  
14 Clerk

15 s/Claudia Hawney  
16 Deputy Clerk  
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